

ESTTA Tracking number: **ESTTA475665**

Filing date: **05/31/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Humboldt Wholesale, Inc.		
Entity	Corporation	Citizenship	United States
Address	1162 Samoa Boulevard Arcata, CA 95521 UNITED STATES		

Attorney information	Lisel M. Ferguson Procopio, Cory, Hargreaves & Savitch LLP 525 B Street, Suite 2200 San Diego, CA 92101 UNITED STATES docketing@procopio.com, lmf@procopio.com, mlf@procopio.com, hac@procopio.com Phone:619-515-3207		
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### Applicant Information

Application No	85340459	Publication date	05/29/2012
Opposition Filing Date	05/31/2012	Opposition Period Ends	06/28/2012
Applicant	Humboldt Nutrients LLC 6 - 5th Street Eureka, CA 95501 UNITED STATES		

### Goods/Services Affected by Opposition

Class 001. First Use: 2007/06/01 First Use In Commerce: 2007/06/01 All goods and services in the class are opposed, namely: Fertilizers; Plant nutrition preparations
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### Grounds for Opposition

Other	likelihood of confusion
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Related Proceedings	Humboldt Wholesale, Inc. v. Humboldt Nation Distribution, LLC; Humboldt Nutrients, LLC, Case No.: CV 11 4144 EMC, in the U.S. District Court for the Northern District of California
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Attachments	USPTO_Opposition_to_registration_of_Humboldt_Nutrients_mark.pdf ( 6 pages ) (21580 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Lisel M. Ferguson/
Name	Lisel M. Ferguson
Date	05/31/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Intent-to-Use	)	
Trade Mark Application Serial No. <b>85/340,459</b>	)	Opposition No.
filed June 7, 2011,	)	
by Humboldt Nutrients, LLC	)	
published on May 29, 2012, in	)	
the Official Gazette,	)	
for the mark HUMBOLDT NUTRIENTS	)	
in International Classes 001.	)	
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**NOTICE OF OPPOSITION**

Assistant Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Dear Sir/Madam:

Applicant's proposed mark "HUMBOLDT NUTRIENTS" should not be registered because its current use has caused actual confusion and is likely to cause additional widespread confusion with the earlier and competing uses of a family of HUMBOLDT WHOLESALE marks owned by Humboldt Wholesale, Inc. (hereafter "HUMBOLDT WHOLESALE").

As grounds for its opposition, HUMBOLDT WHOLESALE, by and through its attorney, Lisel M. Ferguson of Procopio Cory Hargreaves & Savitch LLP, 525 B Street, Suite 2200, San Diego, CA 92101, respectfully allege:

1. Opposer is a corporation organized and existing under the laws of the State of California with a principal place of business at 1162 Samoa Boulevard, Arcata, California 95521.

2. At all times here mentioned, Opposer has been actively engaged in providing hydroponic and soil gardening goods and services in the United States under its “HUMBOLDT WHOLESALE” family of trademarks.

3. By way of example, Opposer owns the following federally registered “HUMBOLDT WHOLESALE” trademarks for hydroponic and soil gardening goods and services: Reg. No. 3,721,408 for HW HUMBOLDT WHOLESALE and Design, registered in international classes 001 (hydroponic and soil gardening goods, namely, growing medium, soil, fertilizers, soil additives, and nutrients for soil, namely, soil improving agents, soil amendments that contain nitrogen) and 011 (plant grow lights, electric fans and filters for hydroponic or soil gardening systems); Reg. No. 3,681,708 for HUMBOLDT WHOLESALE, registered in international class 001 (hydroponic and soil gardening goods, namely, growing medium, soil, fertilizers, soil additives, and nutrients for soil, namely, soil improving agents, soil amendments that contain nitrogen); Serial No. 85/320,864 for HUMBOLDT WHOLESALE, application for registration in international classes 001 (hydroponic and soil gardening goods, namely, growing medium, soil, fertilizers, soil additives, and nutrients for soil, namely, soil improving agents, soil amendments that contain nitrogen) and 035 (online wholesale and online retail store services and wholesale store services all featuring agricultural and gardening-related products, hydroponic and soil gardening goods, namely, growing medium, soil, fertilizers, soil additives, and nutrients for soil, namely, soil improving agents, soil amendments that contain nitrogen, tools, equipment, gear and apparel). These registrations are in full force and effect.

4. By virtue of advertising, marketing, and providing hydroponic and soil gardening goods and services under the “HUMBOLDT WHOLESALE” marks, said marks are recognized as identifying hydroponic and soil gardening goods, namely, growing medium, soil, fertilizers,

soil additives, and nutrients for soil, namely, soil improving agents, soil amendments that contain nitrogen, growing lights, fans and filters originating or otherwise associated with Opposer.

5. Opposer regularly polices its HUMBOLDT WHOLESALE marks. Opposer is informed and believes and based thereon alleges that there is at most *de minimis* actual use of HUMBOLDT WHOLESALE marks on similar third-party goods and services.

6. Opposer is informed and believes and based thereon alleges that Applicant is a Limited Liability Company organized and existing under the laws of the State of California, with a principal place of business at 716 W. Cedar Street, #D, Eureka, CA 95501.

7. The goods and services recited in Applicant's U.S. trademark application Serial No. 85/340,459 for HUMBOLDT NUTRIENTS are "fertilizers and plant nutrition preparations" in International Class 001.

8. The proposed mark HUMBOLDT NUTRIENTS would be confusingly similar to Opposer's "HUMBOLDT WHOLESALE" marks. The respective marks are similar in sight, sound and appearance. The respective goods and services – **fertilizers and plant nutrition preparations** sold under the HUMBOLDT NUTRIENTS mark, and **hydroponic and soil gardening goods, namely, growing medium, soil, fertilizers, soil additives, and nutrients for soil, namely, soil improving agents, soil amendments that contain nitrogen, growing lights, fans and filters** sold under the HUMBOLDT WHOLESALE marks--are not only related, but essentially identical. The respective goods are now and will continue to be advertised, marketed, and provided to the very same class of consumers, using the same and/or similar marketing channels. Accordingly, it is likely that consumers mistakenly believe that Applicant's proposed

HUMBOLDT NUTRIENTS mark for fertilizers and plant nutrition goods is associated in some manner with Opposer.

9. Registration of Applicant's HUMBOLDT NUTRIENTS mark for these goods would be inconsistent with Opposer's rights in its "HUMBOLDT WHOLESALE" marks and would damage Opposer. Specifically, Applicant is using the HUMBOLDT NUTRIENTS mark to brand its business model, which unfairly and illicitly replicates the Opposer's "HUMBOLDT WHOLESALE" business model.

10. Pursuant to 15 U.S.C. § 1063, HUMBOLDT WHOLESALE hereby opposes registration of U.S. trademark application Serial No. 85/340,459, filed June 7, 2011 because HUMBOLDT WHOLESALE would be seriously damaged by registration of HUMBOLDT NUTRIENTS for fertilizers and plant nutrition preparations as recited in the application.

11. The HUMBOLDT NUTRIENTS and HUMBOLDT WHOLESALE marks are currently the subject of trademark infringement litigation between the two owners, in the matter of *Humboldt Wholesale, Inc. v. Humboldt Nation Distribution, LLC; Humboldt Nutrients, LLC*, Case No.: CV 11 4144 EMC, in the U.S. District Court for the Northern District of California.

WHEREFORE, it is respectfully prayed that the registration of the HUMBOLDT NUTRIENTS Application Serial No. 85/340,459 not be permitted.

I authorize you to deduct the filing fee in the sum of \$300.00 for the original Notice of Opposition from the Procopio Cory Hargreaves & Savitch LLP Deposit Account number 502075.

Respectfully submitted,

Dated: May 31, 2012

By: /Lisel M. Ferguson/  
 Lisel M. Ferguson  
 Attorney for Opposer  
 Humboldt Wholesale, Inc.

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**CERTIFICATE OF SERVICE**

I, Lisel M. Ferguson, hereby certify that on May 31, 2012, I served copies of the foregoing Notice of Opposition on the following parties pursuant to 37 C.F.R. §2.119 by way of First Class Mail:

Humboldt Nutrients, LLC  
c/o  
Ms. Koren R. McWilliams, Esq.  
Johnson, Moncrief & Hart, PC  
16 W. Gabilan Street  
Salinas, CA 93901  
831-759-0900 (phone)  
831-759-0902 (fax)

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 31, 2012.

/Lisel M. Ferguson/

Lisel M. Ferguson